

Message Text

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DRAFTED BY DOD/SAFGE - D.F.EDWARDS

APPROVED BY EUR/SE - N.C.LEDSKY

DOD/ISA - CMDR. GRUNEWALT

EUR/SE - MR.KIRBY

L/PM - MR.BOREK

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S E C R E T STATE 008003

E.O. 11652: GDS

TAGS: MARR, TU

SUBJECT:I.A. NEGOTIATIONS: AIR TECH

REFS: (A) ANKARA 9303; (B) STATE 137644, DTG 131930Z JUL 73

(C) ANKARA 7948; (D) STATE 242604

1. DEPARTMENT POSITION ON CLAIMS ISSUE REMAINS AS STATED
REF B, PARTICULARLY PARAS 4 THROUGH 7. CONSEQUENTLY, IF THE
AIR TECH 1.A.IS TO CONTAIN ANY REFERENCE TO SETTLEMENT OF
THIRD-PARTY CLAIMS, IT MUST BE TO ARTICLE VIII OF NATO/SOFA.
EMBASSY MAY, OF COURSE, CONTINUE TO ASSURE THE TURKS THAT
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THE USG WILL HANDLE ANY CLAIMS ARISING FROM AN AIR DISASTER

EXPEDITIOUSLY, AND THAT FULL CONSIDERATION WILL BE GIVEN TO THE NATURE OF THE FLIGHT. AS EXPLAINED IN REF B, HOWEVER, WE HAVE VERY LITTLE LATITUDE ON THIS ISSUE.

2. EMBASSY MAY WISH TO CONSIDER TABLING AT THIS TIME PROPOSAL TO DEAL WITH THIRD-COUNTRY OVERFLIGHTS IN A SEPARATE EXCHANGE OF NOTES AS PER REFS C AND D. IT COULD BE RECEIVED AS FURTHER USG ASSURANCE THAT ANY CLAIMS ARISING FROM SUCH FLIGHTS WILL RECEIVE CAREFUL CONSIDERATION. IN VIEW OF THE CLARITY OF NATO SOFA ON THIRD-PARTY CLAIMS, THOUGH, IN THAT NO DISTINCTION IS MADE IN ART VIII, PARA 5, BETWEEN NATO AND NON-NATO RELATED ACTIVITIES, WE SHOULD EXPECT TURKISH CONCESSIONS BEYOND THE CLAIMS ISSUE.

3. WE HAVE CONSIDERED THE POSSIBILITY OF AN AGREEMENT WITH THE TURKS WHEREBY THIRD COUNTRY OVERFLIGHTS WOULD BE REGARDED AS NOT INCLUDED WITHIN THE QTE FORCE UNQTE AS THAT TERM IS DEFINED IN ART I, PARA 1(A), NATO SOFA. SUCH AN AGREEMENT WOULD OPEN THE WAY TO US ASSUMPTION OF 100 PERCENT LIABILITY IN THIRD PARTY CLAIMS ARISING FROM THIRD COUNTRY OVERFLIGHT MISSIONS, BY REMOVING SUCH CLAIMS FROM NATO SOFA COVERAGE. HOWEVER, AS NOTED IN PARA 2, REF B, BECAUSE OF CRIMINAL JURISDICTION IMPLICATIONS, US HAS TAKEN POSITION AGAINST ANY PRIOR AGREEMENT THAT A PARTICULAR GROUP OR OPERATION IS NOT NATO RELATED, UNLESS THE PERSONNEL INVOLVED FIRST OBTAINED DIPLOMATIC IMMUNITY OR OTHER PROTECTION EQUAL TO OR BETTER THAN ART VII, NATO SOFA. MOREOVER, SUCH A COURSE WOULD ESTABLISH A MOST UNFORTUNATE PRECEDENT WITH OUR OTHER NATO PARTNERS AND COULD ADVERSELY AFFECT OTHER ASPECTS OF THE CURRENT IA NEGOTIATIONS. IN OUR VIEW THE POTENTIAL DRAWBACKS INVOLVED IN EXCLUDING THIRD COUNTRY OVERFLIGHTS FROM NATO SOFA COVERAGE OUTWEIGH THE BENEFITS WE MIGHT THEREBY DERIVE FROM AN EARLY RESOLUTION OF THIS ISSUE. HOWEVER, WE WOULD APPRECIATE EMBASSY'S FURTHER COMMENTS AND RECOMMENDATIONS. INGERSOLL

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